

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 187,146

ORDER

ON October 18, 1994, the Appeals Board heard argument in claimant's request to review the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard dated September 2, 1994.

APPEARANCES

Claimant appeared by her attorney, Leah B. Burkhead of Mission, Kansas. Respondent and its insurance carrier appeared by their attorney, Clifford K. Stubbs of Lenexa, Kansas. There were no other appearances.

ISSUES

The Administrative Law Judge denied claimant's request for temporary total and medical treatment. The claimant requests the Appeals Board review the Preliminary Hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board, finds:

This proceeding must be remanded to the Administrative Law Judge for additional findings. The respondent asserted four defenses at the Preliminary Hearing:

(1) Claimant did not sustain an accident that arose out of and in the course of her employment; (2) claimant did not give timely notice of accident; (3) any disability that claimant suffers is the result of the natural aging process and normal activities of daily living, and therefore, claimant is not entitled to benefits; and (4) claimant is neither temporarily totally disabled, nor in need of medical treatment.

Under K.S.A. 44-534a, the Appeals Board has the authority and jurisdiction to review Preliminary findings which address the issues set forth in numbers 1, 2, and 3, above. However, a Preliminary finding which addresses issue number 4, above, is not subject to review.

Because the Administrative Law Judge failed to note the reason for his denial of benefits, the Appeals Board is unable to determine whether it has jurisdiction to review this preliminary matter.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this proceeding should be, and hereby is, remanded to the Administrative Law Judge for additional findings and a statement explaining the reason for the denial of benefits; that the Appeals Board does not retain jurisdiction over this matter and the parties must file a new Application for Review and follow the appropriate procedure should they be aggrieved after they receive the additional findings from the Administrative Law Judge.

IT IS SO ORDERED.

Dated this ____ day of November, 1994

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

CC:

Cliff Stubbs, Attorney at Law, Lenexa, KS
Leah Brown Burkhead, Attorney at Law, Mission, KS
Steven J. Howard, Administrative Law Judge
George Gomez, Director